

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ERNEST CARTER, Plaintiff, v. ST. CLOUD CORRECTIONAL CENTER/ DEPARTMENT OF CORRECTIONS, Defendants.	Case No. 16-cv-2979 (DWF/HB) REPORT AND RECOMMENDATION
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Plaintiff Ernest Carter commenced this action by filing a complaint seeking relief under 42 U.S.C. § 1983. [Doc. No. 1.] Carter did not pay any filing fee for this case, but instead filed an application seeking leave to proceed *in forma pauperis* (“IFP”). [Doc. No. 3.] On October 17, 2016, this Court ordered Carter to pay \$23.18 as an initial partial payment within twenty days, which gave him until November 7, 2016, to pay. [Doc. No. 6.] On November 2, 2016, Carter filed a motion requesting sixty additional days to pay the fee. [Doc. No. 7.] The Court granted Carter an additional thirty days until December 7, 2016, to pay the initial partial filing fee, and warned him that no further extensions of time would be granted. [Doc. No. 8.] The Court also warned Carter that if he failed to pay by that date, the Court would recommend that this action be dismissed without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

The December 7 deadline has now passed, and Carter has not paid the required

initial partial filing fee.¹ Accordingly, the Court now recommends in accordance with its prior Order that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

Accordingly, based on all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: December 16, 2016

s/ Hildy Bowbeer

HILDY BOWBEER

United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a

¹ The Order granting the extension of time was returned by the post office as undeliverable six days after the Order was issued. [Doc. No. 9.] Although Carter did not notify the Court of a change of address, as is his responsibility, the Clerk’s Office located him via the Minnesota Department of Corrections offender locator website and re-mailed the Order to him at MCF-Rush City on November 23, 2016. The Court accounts for that weeklong delay in issuing this Report and Recommendation, effectively giving Carter until December 15, 2016, to pay the required initial partial filing fee.

magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.